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December 18, 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*; WC Docket No. 01-338

Dear Ms. Dortch:

On December 17, 2002, the undersigned of Covad Communications (Covad) made an *ex parte* presentation to Elizabeth Yockus of the Wireline Competition Bureau. In that presentation, Covad discussed the fallacies of the argument that unbundling obligations disincent ILEC deployment of next generation network facilities utilizing hybrid fiber-copper and digital loop carrier technologies.

Since the Commission adopted its packet-switching rules in the 1999 *UNE Remand Order*, the issue of competitor access to unbundled loop facilities including fiber subloop components has remained mired in a morass of rhetoric and obfuscation by the RBOCs. The RBOCs routinely raise the alarm that Congress' unbundling framework in the 1996 Telecommunications Act will depress investment in new network facilities. In fact, the RBOCs have continued to make the very network investments they claim are being disincented, in keeping with their consistent pattern of telling the Commission one thing, while doing (and telling investors) quite another. A close examination of the facts, however, demonstrates what the U.S. Supreme Court recently found: unbundling network elements such as fiber-fed loops does not disincent investment in new network facilities.¹

¹ See *Verizon v. FCC*, 122 S.Ct. 1646 (2002). In particular, the Court noted that "a regulatory scheme that can boast such substantial competitive capital spending over a 4-year period is not easily described as an unreasonable way to promote competitive investment in facilities." *Id.* at 1676. The Court went on to note that "[n]or, for that matter, does the evidence support Justice Breyer's assertion that TELRIC will stifle incumbents' 'incentive ... either to innovate or to invest' in new elements. As Justice Breyer himself notes, incumbents have invested 'over \$100 billion' during the same period. The figure affirms the commonsense conclusion that so long as TELRIC brings about some competition, the incumbents will continue to have incentives to invest and to improve their services to hold on to their existing customer base." *Id.* at 1676, n. 33.



In fact, state regulators in Illinois and Wisconsin have required the provision of unbundled access to fiber-fed loop technologies as end-to-end UNEs at TELRIC rates. Notwithstanding RBOC threats to the contrary, the requirement to provide access to an unbundled end-to-end “broadband UNE” has not disincented RBOC roll-out of next-generation network facilities in these two states. Specifically, in Illinois, state regulators required SBC Ameritech to provide unbundled access to its Project Pronto architecture as a broadband end-to-end UNE in March 2001.² This decision, however, has not led SBC to desist deploying next-generation network facilities. Specifically, after analyzing data taken from SBC’s network planning tool in August 2002,³ Covad has found that SBC installed NGDLC equipment in 322 remote terminal locations in Illinois subsequent to the decision of the Illinois Commerce Commission to unbundle a broadband UNE in March 2001. The same data indicate that SBC had not installed Pronto in any remote terminals prior to March 2001. Thus, SBC began deploying Pronto architecture in Illinois even after being required to make it available as an end-to-end UNE. Moreover, the data reveal that SBC continues its NGDLC upgrades; specifically, the data reveal that, as of August 2002, 313 of SBC’s remote terminal upgrades in Illinois were scheduled for completion with firm completion dates in 2002, notwithstanding the existence of a broadband UNE unbundling obligation for more than a year. In other words, notwithstanding the Pronto unbundling order in March 2001, as of August 2002, SBC maintained plans to nearly double its Pronto deployment in Illinois by the end of 2002. These data show unequivocally that SBC continues to roll-out its Project Pronto architecture, even in the face of an unbundling requirement.

The picture is very similar in Wisconsin, another state where SBC was required to unbundle a broadband end-to-end UNE. The Wisconsin Public Service Commission required SBC Ameritech to make a broadband UNE available to competitors in March 2002.⁴ Covad’s analysis of data from SBC’s network planning tool discloses that, prior to the Wisconsin order unbundling Pronto, SBC had already deployed Pronto in 958 remote terminals. Furthermore, data as of November 2002 indicate that SBC had installed Pronto in an additional 181 remote terminals in Wisconsin since the time of the Wisconsin Public Service Commission’s decision. In other words, following the Wisconsin order unbundling Pronto, SBC increased its Pronto deployment by nearly 20

² See *Illinois Bell Telephone Company, Proposed Implementation of High Frequency Portion of Loop (HFPL) Line Sharing Service*, Docket No. 00-0393, Order (dated March 14, 2001). The Illinois Commerce Commission has reaffirmed its decision to unbundle a broadband UNE numerous times since its original decision. Its latest decision was issued on March 29, 2002. See *Illinois Bell Telephone Company, Proposed Implementation of High Frequency Portion of Loop (HFPL) Line Sharing Service*, Docket No. 00-0393, Order on Second Rehearing (dated March 29, 2002).

³ These data were obtained by Covad from SBC’s DTI tool, a network planning tool SBC makes available to CLECs.

⁴ See *Investigation Into Ameritech Wisconsin’s Unbundled Network Elements*, No. 6720-TI-161, Final Decision (dated March 22, 2002).



percent. Moreover, the data reveal that, as of November 2002, SBC had scheduled a further 43 remote terminals for upgrade to Pronto architecture by the end of 2002, notwithstanding the existence of a broadband UNE unbundling obligation. Thus, even a full 8 months following the Wisconsin order unbundling Pronto, SBC maintained plans to increase its Pronto deployment in Wisconsin by a cumulative 23% by the end of the year. Again, SBC Ameritech continues to roll-out Project Pronto in Wisconsin, even under an obligation to provide unbundled access to a broadband UNE.

As these data reveal, unbundling a broadband UNE would in no way disincent ILEC investment in fiber-fed loop plant and next-generation digital loop carrier facilities. The truth is that such investments make the ILECs' networks more operationally efficient, and save them money. Prior to the inception of the Commission's *Triennial Review* proceeding, SBC itself claimed that Project Pronto would yield annual savings of approximately \$1.5 billion by 2004 – specifically, \$850 million in savings in operating expenses and \$600 million in savings in capital expenditures.⁵ Regardless of an unbundling requirement, ILECs have every incentive to upgrade their networks to include fiber feeder facilities and next-generation digital loop carrier systems, simply in order to enjoy these substantial cost savings. The continuing roll-out of Project Pronto in Illinois and Wisconsin bears ready confirmation of this fact.

The Commission should not let itself be swayed by the RBOCs' red herring arguments that unbundling a broadband UNE will disincent their investment in next-generation network architectures. Instead, as the Illinois Commerce Commission and Wisconsin Public Service Commission have done, the Commission should require unbundling of broadband UNE in order to allow consumers nationwide to enjoy the benefits of robust competition in the advanced services marketplace.

⁵ See *SBC Announces Sweeping Broadband Initiative*, SBC Investor Briefing, at 2 (October 18, 1999).



Respectfully submitted,

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